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February 1, 2023

VIA ECF

The Honorable J. Paul Oetken
United States District Court
Southern District of New York
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: Lavvan, Inc. v. Amyris, Inc., No. 20-cv-07386 (JPO)
Status Update Pursuant to Dkt. No. 76

Dear Judge Oetken:

We are attorneys for Defendant Amyris, Inc. (“Amyris”) in the above-referenced action. On January 18, 2023, the Court requested that the parties file a joint status letter on or before February 1, 2023, “addressing (1) the status of discovery; (2) the status of any settlement discussions; and (3) a proposed schedule for further proceedings.” Dkt. No. 76. We write to provide Amyris’s status update to the Court. The parties were unable to reach a joint status update.

First, the parties have not engaged in any discovery efforts in this action. They have, however, exchanged a significant number of documents in the related arbitration, some of which might be relevant in this action. Second, the parties have not engaged in settlement discussions since the advent of this case. Third, the parties have not yet agreed to any proposed schedule for further proceedings because the parties remain engaged in negotiations regarding a potential stay of these proceedings pending the forthcoming decision of the arbitral tribunal.¹ To the extent that the parties are unable to jointly stipulate to such a stay, Amyris intends to file a letter motion seeking a stay of these proceedings on February 15, 2023.

Shortly after the Court issued its January 18 Order, Amyris contacted Lavvan seeking to jointly stipulate to a stay until the arbitral tribunal reached a decision in the parties’ pending arbitration proceeding. Appendix A at 5-6. Like this action, the arbitration concerns the parties’ rights under the Research, Collaboration and License Agreement and a decision in the arbitration will, at a

¹ The parties submitted post-hearing briefing on January 11, 2023 and anticipate a decision in the coming months.

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minimum, potentially narrow the scope of this case. Amyris explained that a stay would benefit both parties given “the potential preclusive effects of the arbitration decision on the federal court proceedings.” *Id.* at 3.² Despite acknowledging as much during a September 1, 2021 conference before this Court, *see, e.g.*, Dkt. No. 66 at 5:12-14 (Lavvan counsel stating “there are going to be issues that are teed up in the arbitration that will likely have implications on the scope of the claims here”), Lavvan refused to agree to a stay unless Amyris “provide[d] Lavvan within 21 days a list of all patents owned or controlled by Amyris or any of its affiliates.” Appendix A at 3. Lavvan insisted that this condition was related to the proposed stay and was necessary to “facilitate productive use of a further stay period.” *Id.* at 3.

Amyris was concerned by this request because it suggests that Lavvan has failed to meet its obligations to conduct a reasonable pre-filing inquiry into its claims. Amyris told Lavvan that it was “confused as to how Lavvan’s request that Amyris provide it with a list of all patents it owns or controls” would “facilitate a ‘productive’ stay period” given that “this information [wa]s publicly available to Lavvan, and ha[d] been since it filed suit in September 2020.” Appendix A at 1. Despite these concerns and in an effort to reach an agreement, Amyris again affirmed that it was amenable to discussing Lavvan’s discovery request as part of broader discussions about the case schedule. *Id.* at 1.

Though Amyris remains committed to submitting a joint stipulation with Lavvan staying this case, Amyris will seek such a stay on its own and intends to file a letter motion seeking to stay proceedings on February 15, 2023 in the event that the Parties cannot reach an agreement. In the meantime, Amyris respectfully requests that the Court suspend the deadline for the parties to file a proposed schedule of further proceedings until after the issue of a potential stay is resolved and if such a proposed schedule remains necessary.

² For example, and as discussed during a September 1, 2021 conference before this Court, if Amyris prevails in the arbitration, Lavvan’s claims before this Court will be estopped. *See* Dkt. No. 66 at 8:10-13 (“We believe if we win in the arbitration, this case is over because we will, we hope, have proved that LAVVAN does not have the rights to use our intellectual property the way that they say they want to.”).

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Respectfully Submitted,

By: /s/ Michael D. Celio
Michael D. Celio
GIBSON, DUNN & CRUTCHER LLP

Counsel for Defendant Amyris, Inc.

cc: All Counsel of Record (Via ECF)

Appendix A

From: [Ian Dumain](#)
To: [Beauclair, Chase](#)
Cc: [Matevish, Kelsey](#)
Subject: RE: 1:20-cv-07386-JPO LAVVAN, Inc. v. Amyris, Inc. - Joint Status Update
Date: Tuesday, January 31, 2023 4:43:34 PM

[WARNING: External Email]

Chase—

While we are aware of publicly available patent-related information, including patent records identifying Amyris, Inc. as the assignee of a number of patents, we are not aware of any publicly available representation by Amyris comprehensively identifying the patents that are, to use the language from the RCL Agreement, “Controlled by Amyris and/or its Affiliates.”

If you’re saying that the requested information is publicly available in comprehensive form, please direct us to it, and that may resolve the issue, or alternatively Amyris could simply agree to provide us the information within 21 days as we proposed, which from the sounds of your message Amyris does not view as a difficult request to fulfill.

Thanks.

Ian

From: Beauclair, Chase <CBeauclair@gibsondunn.com>
Sent: Monday, January 30, 2023 3:50 PM
To: Ian Dumain <idumain@cf-llp.com>
Cc: Matevish, Kelsey <KMatevish@gibsondunn.com>
Subject: RE: 1:20-cv-07386-JPO LAVVAN, Inc. v. Amyris, Inc. - Joint Status Update

Ian,

While we acknowledge Lavvan’s concerns about the case remaining idle, we remain confused as to how Lavvan’s request that Amyris provide it with a list of all patents it owns or controls addresses this concern. Although you note that this information will facilitate a “productive” stay period, this information is publicly available to Lavvan, and has been since it filed suit in September 2020.

As noted earlier, we are happy to discuss this request it in the context of the case more broadly.

Best,
Chase
Chase Beauclair

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From: Ian Dumain <idumain@cf-llp.com>
Sent: Monday, January 30, 2023 5:31 AM
To: Beauclair, Chase <CBeauclair@gibsondunn.com>
Cc: Matevish, Kelsey <KMatevish@gibsondunn.com>
Subject: RE: 1:20-cv-07386-JPO LAVVAN, Inc. v. Amyris, Inc. - Joint Status Update

[WARNING: External Email]

Chase—

Our proposal that Amyris identify the patents it owns or controls is not unrelated to the stay issue. As noted, we are concerned about the case (filed in September 2020) remaining idle for months more. The requested information will facilitate productive use of a further stay period (if we can reach agreement) while posing no meaningful burden. Please let me know if you'd like to discuss.

Ian

From: Beauclair, Chase <CBeauclair@gibsondunn.com>
Sent: Friday, January 27, 2023 4:06 PM
To: Ian Dumain <idumain@cf-llp.com>
Cc: Matevish, Kelsey <KMatevish@gibsondunn.com>
Subject: RE: 1:20-cv-07386-JPO LAVVAN, Inc. v. Amyris, Inc. - Joint Status Update

Ian,

We can agree to a stay for the shorter of (i) 5 business days after the Tribunal issues the award, or (ii) 120 days, without prejudice to a potential further extension on agreement or application.

Your second proposal seems unrelated to the issue of the stay and we won't agree to it as part of that process. We are happy to discuss it in the context of the case more broadly.

Best,
Chase

Chase Beauclair

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From: Ian Dumaïn <idumain@cf-llp.com>

Sent: Friday, January 27, 2023 11:14 AM

To: Beauclair, Chase <CBeauclair@gibsondunn.com>

Cc: Matevish, Kelsey <KMatevish@gibsondunn.com>

Subject: RE: 1:20-cv-07386-JPO LAVVAN, Inc. v. Amyris, Inc. - Joint Status Update

[WARNING: External Email]

Chase:

Besides being unnecessary and counterproductive, your criticism is misplaced. The Court ordered the parties to meet and confer on a schedule. Instead of doing that, you proposed a stay, which you said you believed would benefit both sides. We asked you to explain. Having reviewed your explanation, we have concerns about the case remaining idle pending the Tribunal's resolution of the arbitration (which does not yet have a definitive timeline), but are open to considering an approach that furthers your stated goal of conserving resources. In the interest of finding an agreeable path forward, we propose the following:

1. A stipulated stay of proceedings for the shorter of (i) 5 business days after the Tribunal issues the award, or (ii) 120 days, without prejudice to a potential further extension on agreement or application.
2. Amyris to provide Lavvan within 21 days a list of all patents owned or controlled by Amyris or any of its affiliates.

Let us know if that works. If it does, it should be relatively easy to pull together the joint letter to the Court.

Thanks.

Ian

From: Beauclair, Chase <CBeauclair@gibsondunn.com>

Sent: Friday, January 27, 2023 12:09 PM

To: Ian Dumaïn <idumain@cf-llp.com>

Cc: Matevish, Kelsey <KMatevish@gibsondunn.com>

Subject: RE: 1:20-cv-07386-JPO LAVVAN, Inc. v. Amyris, Inc. - Joint Status Update

Ian,

We sent our proposal on Monday; it is now Friday. Any delay in drafting the joint status letter stems from Lavvan's inability to provide a response to what is a very straightforward proposal. Given that both parties have previously acknowledged the potential preclusive effects of the arbitration decision on the federal court proceedings, we believe the mutual benefit in staying the federal court

proceedings until a decision is rendered in the arbitration should be fairly obvious. It is a waste of resources, for both sides, to resume proceedings and initiate discovery when the looming decision in the arbitration may materially narrow the scope of the federal court proceedings. Because Lavvan has now had a full week to consider the proposal, we would appreciate a response by close of business today.

Best,
Chase

Chase Beauclair

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From: Ian Dumain <idumain@cf-llp.com>
Sent: Friday, January 27, 2023 8:00 AM
To: Beauclair, Chase <CBeauclair@gibsondunn.com>
Cc: Matevish, Kelsey <KMatevish@gibsondunn.com>
Subject: RE: 1:20-cv-07386-JPO LAVVAN, Inc. v. Amyris, Inc. - Joint Status Update

[WARNING: External Email]

Chase—

Thanks for your email and the proposed terms of the stipulation. We're open to considering this stipulation, but it would be helpful to us to better understand your assertion that it's in the parties' mutual interest to stay the case pending the outcome of the arbitration. If you can give a little more color, that would be helpful. It would be good to land so we can focus on the joint status letter.

Thanks.

Ian

From: Beauclair, Chase <CBeauclair@gibsondunn.com>
Sent: Thursday, January 26, 2023 3:22 PM
To: Ian Dumain <idumain@cf-llp.com>
Cc: Matevish, Kelsey <KMatevish@gibsondunn.com>
Subject: RE: 1:20-cv-07386-JPO LAVVAN, Inc. v. Amyris, Inc. - Joint Status Update

Ian,

Thank you for getting back to us.

We propose a stay through the Tribunal's award in the pending arbitration, with the Parties to update the Court within 14 days of said award. Should Lavvan agree to this stay, we are happy to circulate a proposed stipulation consistent with this timing. As you are likely aware, courts routinely issue stays where the parties so stipulate.

Please let us know your position by tomorrow at noon ET.

Best,
Chase

Chase Beauclair

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From: Ian Dumain <idumain@cf-llp.com>
Sent: Thursday, January 26, 2023 7:38 AM
To: Beauclair, Chase <CBeauclair@gibsondunn.com>
Cc: Matevish, Kelsey <KMatevish@gibsondunn.com>
Subject: RE: 1:20-cv-07386-JPO LAVVAN, Inc. v. Amyris, Inc. - Joint Status Update

[WARNING: External Email]

Chase—

Thanks for reaching out.

Can you send us the precise language of the stipulation you're proposing?

Also, can you send whatever authority you'd be relying on to support the issuance of a stay in these circumstances?

Ian

From: Beauclair, Chase <CBeauclair@gibsondunn.com>
Sent: Monday, January 23, 2023 3:00 PM
To: Ian Dumain <idumain@cf-llp.com>
Cc: Matevish, Kelsey <KMatevish@gibsondunn.com>
Subject: 1:20-cv-07386-JPO LAVVAN, Inc. v. Amyris, Inc. - Joint Status Update

Ian,

In light of the forthcoming decision in the arbitration, and the impact that the decision will have on the federal court proceedings, we believe that it is in our mutual interest to stay the federal court proceedings pending the outcome of the arbitration. Please let us know whether Lavvan would stipulate to such a stay or if you would like to discuss.

Best,
Chase

Chase Beauclair

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